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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (c) No. 2215 of 2007

Petitioner	:	Vijay Verma
Versus		
Respondent	:	Dena Bank, a banking company duly incorporated under the relevant provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980

Post for order on 17th April, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Writ Petition (c) No. 2215 of 2007

Petitioner	:	Vijay Verma, son of Shri Parmeshwar Lal Verma, aged about 45 years, resident of Ramnivas, P.P. Complex, Ranchi (Jharkhand)
	Versus	
Respondent	:	Dena Bank, a banking company duly incorporated under the relevant provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 having inter-alia amongst other branches a branch office at Jawahar Nagar, Raipur, through the General Manager, Dena Bank, Jawahar Nagar, Raipur/

S.B.: **Hon'ble Justice Shri Satish K. Agnihotri**

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Mr. B.P. Sharma, Advocate for the petitioner.
Mr. Rajeev Shrivastava, Advocate for the respondent

ORDER

(Passed on this 17th day of April, 2007)

1. The petitioner, by this petition, seeks following reliefs:-

   a. A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent bank authorities to produce before this Hon'ble Court all the relevant records for perusal of this Hon'ble Court.

   b. A writ and/or an order in the nature of writ of mandamus do issue commending and directing the respondent bank authorities to constitute an internal mechanism for the consideration of the replies of the borrowers in an objective manner as per the judgment of the Hon'ble Apex Court in the matter of Mardia Chemicals (supra) and till consideration by the said committee the bank authorities be restrained from taking drastic measures of

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dispossession and sale of the property in possession of the borrower as tenant of the petitioner.

c. A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent bank authorities to assess the market value of the said property of the petitioner and on payment thereof the bank authorities may be restrained from dispossessing and selling the said property belonging to the petitioner.

2. The indisputable facts, in nutshell, are that the petitioner namely, Vijay Verma is the owner of the shop No. 86, situated at Jairam Complex, Sharda Chowk, Raipur. In the year 1984, Verma Group Private Limited took the shop for running a unit of M/s. Alankar Jewellers Group Private Limited (hereinafter referred to as 'the Unit'). The Unit had borrowed a Cash Credit Hypothecation (CCH) Limit from the respondent Bank to the tune of Rs. 2 crores. Mr. Sanjay Verma and Smt. Annapurna Verma are the Directors of the said unit. The petitioner is the guarantor of the CCH Limit availed by the Unit. When the Unit failed to discharge its liability under the CCH Limit, their account was declared as Non Performing Asset (NPA) as per the Reserve Bank of India guidelines dated 31st December, 2006. The said Unit was issued a notice dated 4th January, 2007 by the respondent Bank under the provisions of Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act, 2002') and the notices were issued to both the Directors of the Unit namely, Mr. Madhuri Verma and Vijay Verma (the petitioner) also. The Directors submitted their reply (Annexure P/5) stating the reasons.

3. After having considered the reply filed by the directors, the respondent Bank by its letter dated 17.3.2007 (Annexure P/6) dismissed the points/objections raised by the directors and acting as "Secured

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Creditor", called upon the directors to immediately deposit Rs. 210.23 Lacs alongwith applicable interest, with Jawahar Nagar Branch, of the respondent/Bank, failing which it was clearly stated that the respondent Bank would be compelled to initiate enforcement action against M/s Alankar under SARFAESI Act, 2002, which will include the taking of possession and sale of the Prime & Collateral Securities at an early date.

3. Being aggrieved, the petitioner, who is the guarantor to the Unit, filed this petition for several reliefs, as stated above.

4. Section 17 of the Act, 2002 provides for an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days. The petitioner, without availing the said statutory remedy, has approached this Court directly with the plea that the petitioner has to deposit 75% of the total amount and the tribunal is not regularly working.

5. The Supreme Court in the case of **State of H.P. and others vs. Gujarat Ambuja Cement Ltd. and another**[1] held as under:-

> "17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation....."

6. In the matter of **L.K. Verma vs. HMT Ltd. and another**[2], the Supreme Court has further held as under:-

> "20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks

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inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. (See Whirlpool Corpn. Ltd.[3] and State of H.P. v. Gurjat Ambuja Cement Ltd.[4])"

7. Having regard to settled position of law, there is no exceptional circumstances available in this petition so asto exercise of its jurisdiction under Article 226 of the Constitution of India. According to learned counsel appearing for the petitioner, the only exceptional circumstances is that the petitioner has to pay 75% of the total amount before moving the statutory alternative remedy available under Section 17 of the Act, 2002. There is no violation of the principle of natural justice or breach of fundamental right in the matter. The Debt Recovery Tribunal, it is informed at the Bar, is functioning.

8. As a result and for the reasons mentioned hereinabove, the writ petition is dismissed, as not being maintainable in view of availability of effective statutory appellate forum. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (2005) 6 SCC 499
2. (2006) 2 SCC 269

B/-